

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO**

IN THE MATTER:

CASE NO.: 08-03250 (BKT)

José G Andino Rodríguez

CHAPTER 13

Debtor(s)

FIRSTBANK Puerto Rico
Movant

(X) An action against the State
under Title 11 USC §1307(c) (1) and
§1307(c) (6), Title 11 USC §1326

MOTION TO DISMISS

TO THE HONORABLE COURT:

Comes now Movant, **FIRSTBANK PUERTO RICO**, through its undersigning attorney, and very respectfully ALLEGES, STATES and PRAYS:

1. This Honorable Court have jurisdiction under Title 28 USC §1334, and venue under Title 28 USC §1408, and particularly regarding this matter under Title 11 USC §1307(c) (1), (4) and (6), on Conversions and Dismissals, and Title 11 USC §1326, on Payments.

2. Debtor filed the instant petition under a chapter 13 on May 22, 2008.

3. MOVANT, standing to address this Court is ascertained as it filed a secured lien claim duly registered at the Department of Transportation of Puerto Rico under acc. no. 2973 for the outstanding debt of \$22,368.61. *See Claims Register no. 2-1*

4. As of to November 23, 2010 debtor(s) already had the following installments owed to the chapter 13 Trustee: \$1,050.00 dollars, for three (3) months in arrears. Refer to **Exhibit A**.

5. This evidence as well, is not ready for confirmation under 11 USC §1325 (a) (1) that provides... Except as provided in subsection (b), the court shall confirmed a plan *if* - a feasibility problem for confirmation under 11 USC §1325 (a) (6) ... the debtor will be able to make all payments under the plan and to comply with the plan; and none compliance with the "new" provisions under 11 USC §1326(a) (1) Unless the court orders otherwise, the debtor shall commence making ~~the payments proposed by the plan 30 days after the plan is filed;~~ payments not

later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier, in the amount – (A) proposed by the plan to the trustee;

6. Under the terms of the confirmed plan dated June 6, 2008 debtor(s) should have started to make continues payments since June 22, 2008, and as evidenced herein, the debtor(s) have failed to do so. ***Docket no. 9 and 23.***

7. Pursuant to the Service Members Civil Relief Act: - the data banks of the Department of the Defense Manpower Data Center confirmed that the debtor(s) is (are) not member(s) of the Uniformed Services (US Armed Forces, Navy, Marine Corps, Air Force, NOAA, Public Health, and Cost Guard.) ***Exhibit B***

For the reasons stated above, MOVANT respectfully request from this Court to enter an order dismissing the present case pursuant Title 11 USC §1307(c) (1) on ***Unreasonable delay by debtor that is prejudicial to Creditors, and*** Title 11 USC §1307(c) (6) on ***Material Default of a debtor with respect to a term of a confirmed plan***

NOTICE

Within thirty (30) days after service as evidenced by the certification, and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if you were served by mail, any party against whom this motion has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the Clerk's office of the U.S. Bankruptcy Court for the District of Puerto Rico. If no objection or other response is filed within the time allowed herein, this motion will be deemed unopposed and may be granted unless: (i) the requested relief is forbidden by law; (2) the requested relief is against public policy; or (iii) in the opinion of the Court, the interest of justice requires otherwise.
Puerto Rico Local Bankruptcy Rule 9013-1(h)

In San Juan, Puerto Rico, on December 23, 2010

CERTIFICATE OF SERVICE

I hereby certify that a copy was served by CM/ECF at the authorized address: - to all creditors, - to Atty. Alejandro Oliveras//José Carrión Morales, as Chapter 13 Trustee, and - to the attorney of the debtor(s) Marilyn Valdez Ortega, and to debtor(s) José G Andino Rodríguez, by regular mail at the address on record, Street 18 Z 5, Urb Souci, Bayamón, Puerto Rico 00951.

By: //S// María M. Benabe Rivera
MARIA M. BENABE-RIVERA, ESQ.
Attorney for Movant - US - DC 208906
MARISTELLA SANCHEZ – RODRIGUEZ – US – DC 224714
1519 Ponce De León Ave., 2nd Floor
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maria.benabe@firstbankpr.com

FIRSTBANK

Analysis Sheet to Determine Arrears to Trustee

In Re : JOSE G. ANDINO RODRIGUEZ

Case Number : 08-03250 (BKT) - (JRC)

Account Number : 2973

Date of File : 05/22/2010

Amount of Proof of Claim : \$22,368.91

Plan : \$350.00 X 60

Monthly Payment of : \$350.00

Pass term : 30 Months

Total paid in to plan : \$10,500.00

Should have paid in : \$9,450.00

Amount in Arrears : 03 months (\$1,050.00)

Printed on : *November 23, 2010*

Prepared by : *Aida Benezario*

Exhibita

PRINT INQUIRY[Close Window](#)[Click Here to Print this Page](#) 

08-03250-BKT JOSE GEOVANNIE ANDINO RODRIGUEZ (xxx-xx-0541)		SAN SOUCI • \$350.00 MO Z-5 CALLE 18 • BAYAMON • PR • 00951	Bar Date(s): 10/1/2008 (has passed) 11/18/2008 (has passed)
Trustee: José R. Carrión		Attorney: MARILYN VALDES ORTEGA*	Confirmed: 11/18/2008
			Case Status: ACTIVE

Financials

Date	Payee	Payee Name	Source / Check	Description	Receipts	Disbursements
11/1/2010	7	FIRST BANK PUERT RICO	6241563	CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS		\$316.75
11/1/2010		JOSE R. CARRION	563018	TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS		\$33.25
10/20/2010			0500 01720 0647	LOCKBOX PAYMENT	\$350.00	
10/4/2010	7	FIRST BANK PUERT RICO	6241342	CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS		\$316.75
10/4/2010		JOSE R. CARRION	560215	TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS		\$33.25
9/1/2010	7	FIRST BANK PUERT RICO	6240882	CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS		\$339.50
9/1/2010		JOSE R. CARRION	557976	TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS		\$10.50
8/31/2010			0502 01790 1262	LOCKBOX PAYMENT	\$350.00	
8/16/2010			0503 00330 3187	LOCKBOX PAYMENT	\$350.00	
8/2/2010	7	FIRST BANK PUERT RICO	6240586	CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS		\$322.00
8/2/2010		JOSE R. CARRION	555975	TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS		\$28.00
7/8/2010			0505 00590 0090	LOCKBOX PAYMENT	\$350.00	
7/1/2010	7	FIRST BANK PUERT RICO	6240321	CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS		\$322.00
7/1/2010		JOSE R. CARRION	554241	TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS		\$28.00
6/8/2010			0500 00530 7798	LOCKBOX PAYMENT	\$350.00	
6/1/2010	7	FIRST BANK PUERT RICO	6240116	CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS		\$322.00
6/1/2010		JOSE R. CARRION	552038	TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS		\$28.00
5/3/2010	7	FIRST BANK PUERT RICO	6239844	CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS		\$322.00
5/3/2010		JOSE R. CARRION	549970	TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS		\$28.00
4/29/2010			0500 01350 8703	LOCKBOX PAYMENT	\$350.00	
4/1/2010	7	FIRST BANK PUERT RICO	6239613	CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS		\$315.88
4/1/2010		JOSE R. CARRION	547991	TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS		\$34.12
3/29/2010			0502 01110 2295	LOCKBOX PAYMENT	\$350.00	

3/1/2010			0503 02310 7863	LOCKBOX PAYMENT	\$350.00	
2/2/2010	7	FIRST BANK PUERT RICO	6239141	CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS		\$315.88
2/2/2010		JOSE R. CARRION	543796	TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS		\$34.12
1/20/2010			0500 01620 9685	LOCKBOX PAYMENT	\$350.00	
1/1/2010	7	FIRST BANK PUERT RICO	6238920	CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS		\$315.88
1/1/2010		JOSE R. CARRION	541818	TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS		\$34.12
12/8/2009			0501 00180 7431	LOCKBOX PAYMENT	\$350.00	
12/1/2009	7	FIRST BANK PUERT RICO	6238733	CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS		\$315.88
12/1/2009		JOSE R. CARRION	539593	TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS		\$34.12
11/2/2009	7	FIRST BANK PUERT RICO	6238537	CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS		\$315.87
11/2/2009		JOSE R. CARRION	537370	TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS		\$34.12
10/30/2009			0502 00980 2164	LOCKBOX PAYMENT	\$350.00	
10/30/2009		JOSE R. CARRION		TRUSTEE FEE ADJUSTMENT		\$0.01
10/13/2009			0500 01430 7293	LOCKBOX PAYMENT	\$350.00	
10/1/2009	7	FIRST BANK PUERT RICO	6238326	CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS		\$315.88
10/1/2009		JOSE R. CARRION	535395	TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS		\$34.12
9/2/2009			0500 00220 8573	LOCKBOX PAYMENT	\$350.00	
9/1/2009	7	FIRST BANK PUERT RICO	6238097	CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS		\$314.99
9/1/2009		JOSE R. CARRION	533155	TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS		\$35.00
8/31/2009		JOSE R. CARRION		TRUSTEE FEE ADJUSTMENT		\$0.01
8/3/2009			0503 00680 9851	LOCKBOX PAYMENT	\$350.00	
8/1/2009	7	FIRST BANK PUERT RICO	6237942	CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS		\$315.01
8/1/2009		JOSE R. CARRION	531169	TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS		\$35.00
7/31/2009		JOSE R. CARRION		TRUSTEE FEE ADJUSTMENT		(\$0.01)
7/23/2009		JOSE R. CARRION		TRUSTEE FEE ADJUSTMENT		(\$0.01)
7/23/2009		JOSE R. CARRION		TRUSTEE FEE ADJUSTMENT		\$0.01
7/7/2009			0500 00320 9487	LOCKBOX PAYMENT	\$350.00	
7/1/2009	7	FIRST BANK PUERT RICO	6237734	CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS		\$314.99
7/1/2009		JOSE R. CARRION	529188	TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS		\$35.00
6/30/2009		JOSE R. CARRION		TRUSTEE FEE ADJUSTMENT		\$0.01
6/1/2009	0	MARILYN VALDES ORTEGA*	6237617	ATTORNEY FEE - MONTHLY DISBURSEMENTS		\$14.49
6/1/2009	7	FIRST BANK	6237533	CREDITOR PAYMENT (PRINCIPAL) -		\$303.14

		PUERT RICO		MONTHLY DISBURSEMENTS		
6/1/2009		JOSE R. CARRION	527198	TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS		\$32.37
5/28/2009			0500 00780 3391	LOCKBOX PAYMENT	\$350.00	
5/1/2009	0	MARILYN VALDES ORTEGA*	6236669	ATTORNEY FEE - MONTHLY DISBURSEMENTS		\$317.62
5/1/2009		JOSE R. CARRION	525322	TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS		\$32.37
4/28/2009			0502 00630 5764	LOCKBOX PAYMENT	\$350.00	
4/7/2009		JOSE R. CARRION		TRUSTEE FEE ADJUSTMENT		\$0.01
4/1/2009	0	MARILYN VALDES ORTEGA*	6236159	ATTORNEY FEE - MONTHLY DISBURSEMENTS		\$317.63
4/1/2009		JOSE R. CARRION	522545	TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS		\$32.37
3/30/2009			0504 00200 0090	LOCKBOX PAYMENT	\$350.00	
3/2/2009			0501 01070 4175	LOCKBOX PAYMENT	\$350.00	
3/2/2009	0	MARILYN VALDES ORTEGA*	6235535	ATTORNEY FEE - MONTHLY DISBURSEMENTS		\$317.62
3/2/2009		JOSE R. CARRION	520166	TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS		\$32.37
2/27/2009		JOSE R. CARRION		TRUSTEE FEE ADJUSTMENT		\$0.01
2/2/2009			0500 01490 9815	LOCKBOX PAYMENT	\$350.00	
2/2/2009	0	MARILYN VALDES ORTEGA*	6234824	ATTORNEY FEE - MONTHLY DISBURSEMENTS		\$317.63
2/2/2009		JOSE R. CARRION	518003	TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS		\$32.37
1/2/2009	0	MARILYN VALDES ORTEGA*	6234120	ATTORNEY FEE - MONTHLY DISBURSEMENTS		\$317.62
1/2/2009		JOSE R. CARRION	515614	TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS		\$32.37
12/29/2008		JOSE R. CARRION		TRUSTEE FEE ADJUSTMENT		\$0.01
12/23/2008			0505 01300 0090	LOCKBOX PAYMENT	\$350.00	
12/3/2008	0	MARILYN VALDES ORTEGA*	6233555	ATTORNEY FEE - MONTHLY DISBURSEMENTS		\$1,097.39
12/3/2008		JOSE R. CARRION	513189	TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS		\$111.85
11/26/2008			0652 01101 0090	LOCKBOX PAYMENT	\$350.00	
11/26/2008		JOSE R. CARRION		TRUSTEE FEE ADJUSTMENT		\$10.19
11/5/2008	7	FIRST BANK PUERT RICO	6232952	CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS		\$100.00
10/23/2008			0652 00341 3556	LOCKBOX PAYMENT	\$350.00	
9/29/2008		JOSE R. CARRION		TRUSTEE FEE ADJUSTMENT		\$15.28
9/23/2008			0655 00461 1616	LOCKBOX PAYMENT	\$350.00	
9/2/2008	7	FIRST BANK PUERT RICO	6232550	CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS		\$100.00
9/2/2008	7	FIRST BANK PUERT RICO	6232550	CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS		\$100.00
8/28/2008		JOSE R. CARRION		TRUSTEE FEE ADJUSTMENT		\$15.29

8/25/2008			0651 00301 4833	LOCKBOX PAYMENT	\$350.00	
8/1/2008	7	FIRST BANK PUERT RICO	6232391	CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS		\$200.00
7/28/2008			0600 00201 5832	LOCKBOX CORRECTIONS	\$350.00	
6/27/2008			0601 00101 9058	LOCKBOX CORRECTIONS	\$350.00	
				Totals:	\$9,450.00	\$9,450.00

Department of Defense Manpower Data Center

Dec-01-2010 04:46:39



Military Status Report
Pursuant to the Service Members Civil Relief Act

Last Name	First/Middle	Begin Date	Active Duty Status	Active Duty End Date	Service Agency
ANDINO RODRIGUEZ	JOSE G.	Based on the information you have furnished, the DMDC does not possess any information indicating the individual status.			

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard).

Mary M. Snavelly-Dixon

Mary M. Snavelly-Dixon, Director
Department of Defense - Manpower Data Center
1600 Wilson Blvd., Suite 400
Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Service Members Civil Relief Act (50 USC App. §§ 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "defenselink.mil" URL <http://www.defenselink.mil/faq/pis/PC09SLDR.html>. If you have evidence the person is on active duty and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. §521(c).

If you obtain additional information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

This response reflects **active duty status** including date the individual was last on active duty, if it was within the preceding 367 days. For historical information, please contact the Service SCRA points-of-contact.

More information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d)(1) for a period of more than 30 consecutive days. In the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy TARs, Marine Corps ARs and Coast Guard RPAs. Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps) for a period of more than 30 consecutive days.

Coverage Under the SCRA is Broader in Some Cases

Exhibit B

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate.

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of SCRA extend beyond the last dates of active duty.

Those who would rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

WARNING: This certificate was provided based on a name and SSN provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided.

Report ID:AEKH2H9I8J